

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN**

SHERI MARTINI,

Plaintiff

V.

CAPITAL ONE,

Defendant

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Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

COMPLAINT

SHERI MARTINI (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against CAPITAL ONE (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the State of Michigan and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff is a natural person residing in Hazel Park, Michigan.

6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation that has its office located at 1680 Capital One Drive, Mclean VA 22101.

8. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone.

11. Plaintiff has only used this phone as a cellular telephone.

12. Beginning in April 2015 and continuing thereafter, Defendant called Plaintiff on her cellular telephone multiple times per day.

13. When contacting Plaintiff on her cellular telephone, Defendant used an automatic telephone dialing system and/or automatic and/or pre-recorded messages.

14. Plaintiff knew Defendant was calling using an automated and/or pre-recorded message as she heard a pre-recorded message or voice before calls were

1 transferred to one of Defendant's agents.

2 15. Defendant's telephone calls were not made for "emergency purposes"
3 as Defendant has been calling Plaintiff regarding her account balance.

4 16. Desiring to stop these repeated calls, Plaintiff spoke to Defendant in
5 April 2015 shortly after calls began and revoked consent for Defendant to contact
6 her.

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8 17. Once Defendant was aware that its calls were unwanted and to stop,
9 there was no lawful purpose to making further calls, nor was there any good faith
10 reason to place calls.

11
12 18. However, Defendant ignored Plaintiff's revocation and continued to
13 call her cellular telephone number through March 2017.

14 19. Upon information and belief, Defendant conducts business in a
15 manner which violates the Telephone Consumer Protection Act.

16
17 **COUNT I**
18 **DEFENDANT VIOLATED THE**
19 **TELEPHONE CONSUMER PROTECTION ACT**

20 20. Plaintiff incorporates the forgoing paragraphs as though the same were
21 set forth at length herein.

22 21. Defendant initiated multiple telephone calls to Plaintiff's cellular
23 telephone.

24 22. Defendant's calls to Plaintiff were not made for emergency purposes.
25

1 23. Defendant's calls to Plaintiff, in and after April 2015, were not made
2 with Plaintiff's prior express consent.

3 24. Defendant's acts as described above were done with malicious,
4 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
5 under the law and with the purpose of harassing Plaintiff.
6

7 25. The acts and/or omissions of Defendant were done unfairly,
8 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
9 lawful right, legal defense, legal justification or legal excuse.
10

11 26. As a result of the above violations of the TCPA, Plaintiff has suffered
12 the losses and damages as set forth above entitling Plaintiff to an award of
13 statutory, actual and trebles damages.
14

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16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, SHERI MARTINI, respectfully prays for a
18 judgment as follows:
19

- 20 a. All actual damages suffered pursuant to 47 U.S.C. §
21 227(b)(3)(A);
22 b. Statutory damages of \$500.00 per violative telephone call
23 pursuant to 47 U.S.C. § 227(b)(3)(B);
24
25

- 1 c. Treble damages of \$1,500.00 per violative telephone call
2 pursuant to 47 U.S.C. §227(b)(3);
3 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
4 e. Any other relief deemed appropriate by this Honorable Court.
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7 **DEMAND FOR JURY TRIAL**

8 PLEASE TAKE NOTICE that Plaintiff, SHERI MARTINI, demands a jury
9 trial in this case.
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11

12 RESPECTFULLY SUBMITTED,

13 DATED: May 5, 2017

14 KIMMEL & SILVERMAN, P.C.

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